

### **REMARKS**

Reconsideration and withdrawal of the rejections set forth in the Office Action dated April 27, 2009, is respectfully requested in view of this amendment. By this amendment, claims 1-17 have been amended and new claims 18-20 have been added. Claims 1-20 are pending in this application, with claims 1-16 withdrawn from consideration.

The specification has been amended to consistently describe the SMAS-platysma treatment and to include a reference to the terminology "superficial musculoaponeurotic system" (SMAS). The latter is for clarification, and no new matter is intended to be presented and Applicant does not rely on the text insertions for subject matter support of the claims.

The amendments to claims 1-16 are made without prejudice to later prosecution of the subject matter of these claims in this application or a subsequent continuation application.

Claim 17 has been amended to more clearly recite the features of the surgical face detachment device, the succession of surgical devices and the use of a SMAS-platysma treatment. Regarding the SMAS-platysma treatment, this finds support in the specification, as published in US 2006/0235456, at paragraphs [0033] and [0034].

Claim 17 has also been amended to remove specific references to the 20 mm thickness variation, the particular anesthetic solution application and the application of epinephrine for the entire face. These descriptions are now found in new claims 19 and 20.

Claim 18 has been added to describe the passing of the succession of surgical devices by increasing order of thickness, and the results of the progressive thickness regarding vascular intima of tissue subjected to progressive stretching. Support is found in the specification at paragraph [0032].

It is respectfully submitted that the above amendments introduce no new matter within the meaning of 35 U.S.C. §132.

In the outstanding Office Action, the Examiner rejected claim 17 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Claim 17 was

rejected under 35 U.S.C. §103(a) as unpatentable over Journal Publication "The Complete Guide to Cosmetic Facial Surgery" by John A. McCurdy M.D. (hereinafter *McCurdy*) in view of Journal Publication "Video-Endoscopic Facelift Aesthetic Plastic Surgery" by Luiz S. Toledo, M.D. (hereinafter *Toledo*), U.S. Patent Application Publication No. 2003/0018350 to Zucherman et al. (hereinafter *Zucherman*) and Journal Publication "Surgery: Scientific Principles and Practice, Second Edition" by Lazar J. Greenfield et al. (hereinafter *Greenfield/Stevenson*). Also, the Examiner objected to claim 17 due to informalities. These rejections and objections, as applied to the revised claims, are respectfully traversed.

#### **Restriction Requirement**

The Examiner had restricted the present application to one of the following groups:

- I. Claims 1-16, drawn to a surgical skin dissector.
- II. Claim 17, drawn to a method for performing a face lift.

Applicant's representatives confirm the election of Group II, and identify claim 17 as directed to the elected group. This election is made without traverse.

#### **Rejoinder**

Claims 1-16 stand withdrawn pursuant to Applicant's election of claim 17. Claim 1 has been made dependent from elected claim 17 and corresponding changes were made to claims 2-16. As such, claims 1-16 will be entitled to rejoinder upon allowance of claim 17.

#### **Rejections Under 35 U.S.C. §112**

The Examiner rejected claim 17 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Specifically, the reference to the SMAS-PLATYSMA treatment recited in step k of claim 17 allegedly had no clear explanation.

The Examiner also pointed out antecedent basis issues regarding "the surgical face detachment device" and "the remaining surgical devices."

### **Response**

Reconsideration and withdrawal of the rejection are respectfully requested.

35 U.S.C. §112, second paragraph, states that "[t]he specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention."

It is respectfully submitted that amended claim 17 now particularly points out and distinctly claims the subject matter. By this Response and Amendment, the rejections to claim 17 are respectfully traversed.

In terms of "the SMAS-PLATYSMA treatment," this has been reformatted as "SMAS-platysma treatment" to present a more conventional reference to the treatment, and to remove the word "the", to avoid an implication of an antecedent within the claim.

It is respectfully submitted that "SMAS-platysma treatment" is a term of art and well-understood by plastic surgeons skilled in aesthetic facial surgery.

Likewise, the references to "the surgical face detachment device" and "the remaining surgical devices" have been corrected to remove the word "the."

It is therefore respectfully submitted that the rejection under 35 U.S.C. 112 should be withdrawn.

### **Rejections Under 35 U.S.C. §103**

The Examiner rejected claim 17 under 35 U.S.C. 103(a) as unpatentable over *McCurdy* in view of *Toledo*, *Zucherman* and *Greenfield/Stevenson*. *McCurdy* is cited as disclosing the use of local anesthetic, marking of the area for facelift, and beginning the facelift incisions through the anesthetized hemi-face. *Toledo* is cited as disclosing a Facelift method using a 2 cm incision in

the pre and retro auricular regions. *Zucherman* is cited as disclosing a blunt dissector set with multiple grades of thickness used to successively separate tissue to greater and greater widths. The device is used to step or gradually dilate an interspinous ligament and to confirm the correct implant size prior to its insertion. The tip has a gradual taper between ends. A physician may have several of the devices. *Toledo* is cited as describing using a scalpel or scissors and discloses the use of cauterization for hemostasis. The *Greenfield/Stevenson* reference is cited, but not applied in any specific manner to claim 17.

### **Response**

This rejection is traversed as follows. To show obviousness under §103, it is necessary to show an incentive to benefit from the change. *KSR International Co. v. Teleflex Inc. et al.*, 127 S.Ct. 1727, 82 USPQ2d 1385 (2007).

"The proper question to have asked was whether a pedal designer of ordinary skill, facing the wide range of needs created by developments in the field of endeavor, would have seen a benefit to upgrading Asano with a sensor. In automotive design, as in many other fields, the interaction of multiple components means that changing one component often requires the others to be modified as well." (*id* at 127 S.Ct. 1744)

A demonstration of obviousness under §103 requires that the combination represent a design step well within the grasp of a person of ordinary skill in the relevant art. *id*.

"KSR provided convincing evidence that mounting a modular sensor on a fixed pivot point of the Asano pedal was a design step well within the grasp of a person of ordinary skill in the relevant art. (*id* at 127 S.Ct. 1746)

The standard for anticipation under 35 USC 102 and obviousness under 35 USC 103(a) following KSR is detailed in *Forest Labs v. Ivax Pharmaceuticals*, 127 S.Ct. 1727, 82 USPQ2d 1385 (2007). In *Forest Labs*, the court determined that a reference mentioned a particular chemical component, but did not explain how to obtain it and therefore deemed that, "A

reference that is not enabling is not anticipating." The court then deemed the product was therefore unobvious over that reference.

Applicant's claim 17 sets forth:

"... beginning of the cutaneous detachment procedure, passing a surgical face detachment device through the entire facial area ... passing a succession of ... surgical devices by increasing order of thickness until achieving a desired cutaneous detachment, and thereby completing the cutaneous displacement of the portion of the face ... ."

New claim 18 further sets forth a description of the effects of, "performing the passing of the succession of surgical devices by increasing order of thickness results in allowing the sectioning of the vascular intima" to reduce blood flow.

The cited references extensively describe plastic surgery procedures but fail to suggest passing a succession of remaining surgical devices by increasing order of thickness until achieving a desired cutaneous detachment. Instead, *Zucherman*, which describes a type of dilation treatment of spinous ligaments is used to show "a blunt dissector." Instead, *Zucherman* describes a specific method of dilation:

"... The method includes making an incision in the patient and inserting the US 2003/0018350 A1 curved tip 106 of the tool preferably perpendicular to the back in a direction from a posterior position to an anterior position. The tip 106 is then preferably inserted perpendicularly until it comes into the region above the interspinous ligament that is to be dilated. At that point, the tip 106 is substantially parallel to the ligament that is to be dilated." (*Zucherman* at paragraph [0015])

It is respectfully submitted that this is unrelated to Applicant's technique as described in claim 17, because *Zucherman* does not describe a cutaneous detachment procedure, it does not include passing a surgical face detachment device through an entire facial area, it does not describe a succession of devices by increasing order of thickness until achieving a desired cutaneous detachment, and it does not suggest cutaneous displacement of the portion of the face. Instead, *Zucherman* describes, "creating and dilating an opening in the interspinous ligament."

Regarding the technique, Applicant's claim 18 further describes the use of the succession of surgical devices in terms of allowing the sectioning of the vascular intima, immediate formation of blood clots within vascular extremities subjected to progressive stretching with tapering of their lumens, reducing blood flow.

McCordy is cited as disclosing surgical steps except for performing the hemostasy by cauterization, with *Toledo* disclosing the use of cauterization for hemostasis. This combination fails to suggest the use of progressive stretching to result in tapering of the lumens in order to reduce the degree of cauterization required. Accordingly, the cited combination fails to suggest Applicant's subject matter as set forth in claim 18.

The *Greenfield/Stevenson* reference is cited against claim 17, but not applied in any specific manner to the claim. Nevertheless, it is respectfully asserted that the *Greenfield/Stevenson* reference fails to suggest the features of, "passing a succession of remaining surgical devices by increasing order of thickness until achieving a desired cutaneous detachment."

Applicant therefore respectfully submits that the *McCurdy* in view of *Toledo*, *Zucherman* and *Greenfield/Stevenson* references do not teach or suggest all the features as recited in claims 17 and 18.

Additionally, Claims 19 and 20 are written in dependent form and depend from claim 17 or 18. Those dependent claims should be allowable for at least the same reason that these independent claims are allowable.

It is therefore respectfully submitted that the rejections under 35 U.S.C. §103(a) should be withdrawn.

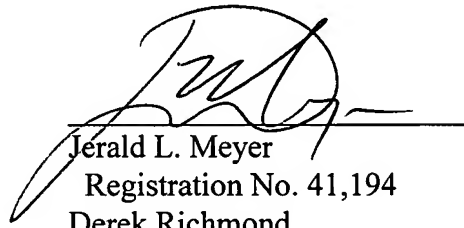
### CONCLUSION

In light of the foregoing, Applicant submits that the application is in condition for allowance. If the Examiner believes the application is not in condition for allowance, Applicant respectfully requests that the Examiner call the undersigned.

Respectfully submitted,  
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